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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

NATIONAL TECHNICAL SYSTEMS,
INC., et al.,

Plaintiffs and Respondents,

v.

BRETT SCHONEMAN,

Defendant and Appellant.

B162794

(Los Angeles County
Super. Ct. No. BC277603)

APPEAL from a judgment of the Superior Court of Los Angeles County.
James C. Chalfant, Judge. Reversed with directions.

Maher & Maher, Michael K. Maher for Plaintiffs and Respondents.

Brett Schoneman, in pro. per., for Defendant and Appellant.

Appellant was sued for posting allegedly defamatory statements about respondent corporation and its president on an Internet message board. Appellant moved to strike the complaint on the grounds that it is a Strategic Lawsuit Against Public Participation

(SLAPP). (Code Civ. Proc., § 425.16.)¹ The trial court denied the motion, finding that the Internet message board is not a public forum and that appellant's postings did not concern matters of public interest. (§ 425.16, subd. (e)(3).)

After conducting an independent review, we conclude that the Internet message board is a public forum; further, message board postings that are critical of the management practices of a publicly traded company and its president are a matter of public interest to existing and potential investors. Respondents did not show that they are likely to prevail on the merits of their lawsuit: they failed to quote a single defamatory statement in their complaint, nor did they demonstrate in their opposition to the anti-SLAPP motion or in their appellate brief why appellant's statements are not protected opinion. We reverse the judgment in favor of respondents.

FACTS

In July 2002, National Technical Systems, Inc. (NTS) and its president Jack Lin sued former NTS vice-president Brett Schoneman for defamation. The complaint alleges that Schoneman, under various aliases, posted material on the Yahoo! Finance message board containing false and defamatory statements that respondents are ignorant, immoral, unethical and have engaged in inappropriate sexual conduct. The complaint does not recite any of the supposedly libelous Internet postings.

Schoneman brought a special motion to strike under the anti-SLAPP statute. He argued that this lawsuit is intended to intimidate and prevent him from posting critical remarks about respondents. He also argued that respondents are unlikely to prevail and brought this action in bad faith. Schoneman declared that all the messages he posted are true, and constitute his opinion that respondents have poor management practices.

¹ The statute is referred to in this opinion as section 425.16 or as the anti-SLAPP statute.

Schoneman maintained that respondents are trying to chill his right to speak freely to investors and employees of NTS about respondents' operations and practices.

Respondents countered that the postings by Schoneman are defamatory and are not protected speech. According to respondents, the postings were not a matter of public interest; were made by a disgruntled former employee; were false; and were made with malice. NTS attached as exhibits some 50 pages of Yahoo! postings that it claims were written by Schoneman. Most of the postings are criticisms of NTS's management, its purported failure to appreciate its employees, and its falling stock prices.

NTS tests components for the military, aerospace and telecommunications industries. Maintaining a reputation for honesty is important to the company's relationship with its customers. NTS is publicly traded, with some 1,000 shareholders. Lin denied that the statements made in Schoneman's postings are true.

The trial court denied Schoneman's special motion to strike. The court found that (1) there is no evidence that the Yahoo! message board is a public forum and (2) there is no evidence that Schoneman's postings concern a matter of public interest. The court did not reach the question of whether respondents can establish a probability of success on the merits of their claim.

DISCUSSION

The anti-SLAPP statute is aimed at curbing "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) Protected speech includes statements made in "a public forum in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) The goal of the anti-SLAPP statute is to eliminate meritless litigation at an early stage of the proceeding. (*Macias v. Hartwell* (1997) 55 Cal.App.4th 669, 672.) The Legislature commands that the provisions of the anti-SLAPP statute be broadly construed. (§ 425.16, subd. (a); *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735.)

There are two components to a motion to strike brought under section 425.16. First, the defendant must make a threshold showing that the lawsuit arises from protected

First Amendment activity. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) Second, if the lawsuit affects protected speech, the court determines whether there is a reasonable probability that the plaintiff will prevail on the claim. (§ 425.16, subd. (b)(1); *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76; *Schoendorf v. U.D. Registry, Inc.* (2002) 97 Cal.App.4th 227, 238.)

An order granting or denying a motion to strike under the anti-SLAPP statute is appealable. (§ 425.16, subd. (j).) On appeal, we exercise our independent judgment to determine whether the litigation arises out of protected activity and whether the plaintiff is likely to prevail. (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 906; *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)

Threshold Showing That The Lawsuit Arises From Protected Activity

Schoneman argues that respondents' defamation claim is an attempt to chill protected speech, and therefore falls within the class of lawsuits covered by section 425.16. The trial court found against Schoneman on this issue, ruling that (a) there is no evidence that the Yahoo! message board is a public forum, and (b) even if the message board is a public forum, there is no evidence that the statements made by Schoneman concern a matter of public interest.

The Internet is "the most participatory form of mass speech yet developed." (*American Civil Liberties Union v. Reno* (E.D.Pa. 1996) 929 F.Supp. 824, 883.) Indeed, Internet chat-rooms allow any person with a telephone line to "become a town crier with a voice that resonates farther than it could from any soapbox." (*Reno v. America Civil Liberties Union* (1997) 521 U.S. 844, 870.) The courts have acknowledged that a "public forum" encompasses Internet bulletin boards or chat-rooms that are open to anyone who wishes to read or post messages regarding publicly traded companies. (*Ibid.*; *Global Telemedia Intern., Inc. v. Doe I* (C.D.Cal. 2001) 132 F.Supp.2d 1261, 1264; *ComputerXpress, Inc. v. Jackson, supra*, 93 Cal.App.4th at pp. 1006-1007.)

A public forum is not limited to a physical setting, and may include other forms of public communication such as newsletters or television broadcasts. (*ComputerXpress,*

Inc. v. Jackson, supra, 93 Cal.App.4th at p. 1006.) A computer site that allows interested individuals to engage in an open exchange of ideas and opinions about a company satisfies the traditional definition of a public forum as “a place that is open to the public where information is freely exchanged.” (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 475.) The Yahoo! message board at issue in this case is a public forum.

Schoneman’s postings on the message board were made “in connection with an issue of public interest.” (§ 425.16, subd. (e)(3).) Internet postings about a publicly traded company that are critical of the company’s management and are aimed at existing or potential shareholders satisfy the requirement that the speech be connected to an issue of public interest. (*ComputerExpress, Inc. v. Jackson, supra*, 93 Cal.App.4th 993, 1007-1008.) Information regarding a publicly traded company “is of public interest because its successes or failures will affect not only individual investors, but in the case of large companies, potentially market sectors or the markets as a whole.” (*Global Telemedia Intern. v. Doe I, supra*, 132 F.Supp.2d at p. 1265.) Public interest in a company is evident when a chat-room dedicated to the company generates many postings. In the *Global Telemedia* case, for example, a chat-room dedicated to Global Telemedia generated over 30,000 postings, indicating that the company is of public interest. (*Ibid.*)

NTS is a publicly traded company. That it has 1,000 or so shareholders (rather than millions of shareholders) does not make its management practices any less interesting for existing shareholders or for investors who might buy shares in NTS. In fact, the Yahoo! message board exhibits submitted by NTS indicate that there have been some 20,685 postings regarding NTS. This suggests that there is considerable public interest in NTS. Respondents do not claim that Schoneman posted all 20,685 messages on the NTS site. Most of the Yahoo! postings contained in the appellate record relate to the value of NTS’s shares and the qualifications of its officers, written in the typically extravagant style of Internet messages.

Respondent Lin argues that the anti-SLAPP statute does not apply to him because he is not a public figure. Lin misconceives the scope of the anti-SLAPP statute. Section 425.16 applies to any person or entity that brings a lawsuit to chill the exercise of First Amendment rights. It does not apply solely to politicians, celebrities or other public figures seeking to squelch unflattering news.

In sum, Schoneman has carried his burden of establishing that his statements were made in a public forum, and, to the extent that they concern respondents' management practices and the value of NTS's stock, the postings involve a matter of public interest.

Likelihood That Appellants Will Prevail Upon The Merits

The plaintiff bears the burden of establishing a probability of prevailing on the merits. (§ 425.16, subd. (b)(1).) The court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) "[I]n order to establish the requisite probability of prevailing [citation], the plaintiff need only have "stated and substantiated a legally sufficient claim." [Citation.] 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."'" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.)

Resolution of the motion does not require evidence weighing or credibility determinations; rather, the court decides the motion on the affidavits, seeing whether, as a matter of law, plaintiff has failed to show a necessary element of its claim or there is a complete defense. (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821; *Walker v. Kiouisis* (2001) 93 Cal.App.4th 1432, 1444; *Kashian v. Harriman, supra*, 98 Cal.App.4th at p. 906.)

On its face, respondents' complaint fails. Defamation must be pleaded with particularity: each allegedly defamatory statement must be specifically identified, if not set forth verbatim in the complaint. (*Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1612, fn. 5.) The court must determine as a question of law whether a publication is

defamatory; it cannot perform this function unless the libel is set forth in the pleading. (5 Witkin, Cal. Procedure (4th ed. 1997), Pleading, § 695, p. 155.) Upon presentation of the alleged libel, the court examines the specific context and content of the statements made, “analyzing the extent of figurative or hyperbolic language used and the reasonable expectations of the audience in that particular situation.” (*Global Telemedia Intern. v. Doe 1, supra*, 132 F.Supp.2d at p. 1267.)

Respondents’ inadequate, two-sentence allegation in their complaint does not quote any defamatory statement made by Schoneman. Respondents cannot demonstrate a likelihood of prevailing with a legally insufficient complaint. (*Navellier v. Sletten, supra*, 29 Cal.4th at pp. 88-89.) In their opposition to Schoneman’s anti-SLAPP motion, respondents do not specify in what respect the 50 pages of Yahoo! postings they submitted as an exhibit constitute actionable libel. In their brief on appeal, respondents *still* fail to itemize the Yahoo! postings and demonstrate why any one of them is libelous. Chat-room postings are treated as protected opinion when they “are full of hyperbole, invective, short-hand phrases and language not generally found in fact-based documents” (*Global Telemedia Intern. v. Doe 1, supra*, 132 F.Supp.2d at p. 1267.) Respondents vaguely argue that some postings are libelous. This does not persuade us that any of Schoneman’s postings are defamatory, as a matter of law.

Respondents request discovery to meet their burden of establishing a probability of success. They seek to discover whether Schoneman knew his statements were false or were made in reckless disregard for the truth. The court may authorize “specified discovery” when an anti-SLAPP motion is made. (§ 425.16, subd. (g).)

We see no need for discovery in this case. Respondents were unable to quote a single defamatory statement in their complaint. In their opposition to the anti-SLAPP motion and in their brief, respondents fail to single out any of Schoneman’s postings and actually demonstrate--with citation to relevant case law--why the statement is actionable. Absent any showing of an objectionable statement, there is no need to conduct discovery to determine truth or falsity. Lacking proof of a specific libelous statement, we must

conclude that respondents cannot prevail because Schoneman's postings are non-actionable opinions, not false statements of fact.

DISPOSITION

The judgment is reversed. The trial court is directed to enter a new order granting Schoneman's special motion to strike. Schoneman is awarded his costs on appeal.

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BOREN, P.J.

We concur:

NOTT, J.

ASHMANN-GERST, J.